



# Peckar & Abramson

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## VIA ECF

November 14, 2011

New York

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Honorable Allyne R. Ross, U.S.D.J.  
United States District Court  
225 Cadman Plaza East  
Brooklyn, New York 11201

**RE: Melamed v. Americare Certified Special Services, Inc.**  
**Docket No. 1:11-cv-04699-ARR-JMA**  
**Our File No. 3710-223170**

Dear Judge Ross:

This office has been retained to represent Defendant Americare Certified Special Services, Inc. ("Americare") in the above-captioned matter commenced by Plaintiffs, Raisa Melamed and Galyna Malyaruk ("Plaintiffs").

Plaintiffs commenced this action on or about September 27, 2000, seeking damages for alleged violations of New York labor law. They seek recovery in their own right and purportedly on behalf of a class of similarly situated employees for which they seek class action relief pursuant to Federal Rule of Civil Procedure 23.

Plaintiffs claim jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) ("CAFA"). The basis of this claim to jurisdiction is that the aggregated claims in the action will, according to Plaintiffs, reasonably exceed \$5 million.

We wrote to Plaintiffs' counsel and requested that they furnish us with the factual basis for the claim of proper jurisdiction, and they subsequently furnished us with Home Health Aide Cost Report data in their position, purportedly filed by Defendant with a state agency. A review of the data, however, shows that there is no support whatsoever for the claim of \$5 million in aggregate damages. Moreover, Defendant is prepared to show that the assumptions used in paragraph 7 of the Complaint to arrive at this \$5 million figure—itsself critically necessary for subject matter jurisdiction—are erroneous.

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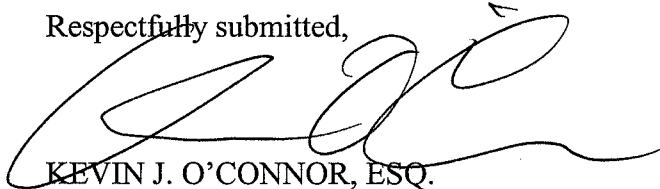
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For the foregoing reasons, we respectfully request leave of Court to move to dismiss the Complaint pursuant to FRCP 12(b)(1) and the CAFA. We have communicated with Plaintiff's counsel and asked that he meet and confer on these issues to avoid a motion, but have not heard back from him.

Thank you in advance for your courtesies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'KJO', with a long horizontal flourish extending to the right.

KEVIN J. O'CONNOR, ESQ.

KJO/ci

350683.1/11/14/11

cc: Jason Rozger, Esq. (via ECF and Regular Mail)  
Denis Serkin, Esq.